IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 388 of 1988

For Approval and Signature:

HONOURABLE MR.JUSTICE C.K.BUCH

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?	
2	To be referred to the Reporter or not ?	
3	Whether their Lordships wish to see the fair copy of the judgment ?	
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?	
5	Whether it is to be circulated to the civil judge ?	

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KANTILAL H PATEL - Appellant(s)
Versus
STATE OF GUJARAT - Opponent(s)

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Appearance :
MR MR BAROT, LD.SENIOR COUNSEL WITH MR.JM BUDDHBHATTI for Appellant.
MR AJ DESAI, LD.APP for Respondent.

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CORAM : HONOURABLE MR.JUSTICE C.K.BUCH

Date : 11/12/2006

ORAL JUDGMENT

1. The appellant-orig.accused has been held guilty for the offence punishable under Section 161 of the Indian Penal Code as well

as under Section 5(1)(d) read with Section 5(2) of the Prevention of Corruption Act, 1947 (old Act) [hereinafter referred to as 'the Act']. The appellant has challenged the legality and validity of the judgment and order of conviction and sentence dated 22nd April, 1988, passed by the learned Special Judge, Ahmedabad (Rural) at Narol, in Special Case No.8 of 1986, whereby he has been asked to undergo simple imprisonment for one year and to pay fine of Rs.250/-, in default to undergo simple imprisonment for three months for the offence punishable under Section 5(1)(d) read with Section 5(2) of the Act. No separate sentence was ordered for the offence punishable under Section 161 of the Indian Penal Code proved against the appellant.

2. The judgment and order under challenge is assailed on various grounds mentioned in paragraph no.2(B) of the memo of the appeal and the learned senior counsel Shri M.R. Barot, appearing with Shri J.M. Budhbhatti, has taken me through all these grounds and has submitted that the judgment and order of

conviction and sentence is erroneous and the learned trial Judge ought to have acquitted the appellant. At least the appellant could have been given benefit of doubt in view of the facts emerging from record. I have heard Shri A.J. Desai, learned Additional Public Prosecutor, appearing on behalf of the State, who has also replied to all the submissions made by the learned senior counsel appearing for the appellant.

3. To appreciate these submissions, it would be first necessary to have a look on the basic facts which were placed before the learned trial Judge. According to the prosecution, the appellant was serving as Talati-cum-Mantri at village Santhal of Taluka Dholka. The complainant-Becharbhai had approached him as he wanted to get the name of his brother and himself entered in the record of rights after the death of his father. As the complainant and his brother had inherited all the properties of their late father, the names of complainant and his brother were required to be mutated in all the relevant

revenue records. For this purpose, the complainant had given an application on 07th February, 1986. But the appellant instead of accepting the application asked the complainant to pay an amount of Rs.500/- for doing the said work towards illegal gratification and assured him that his work shall be done. As the complainant was not in a position to make the payment, it is alleged that he negotiated with the complainant and ultimately agreed that the appellant would be paid an amount of Rs.150/- and the names of the complainant and his brother shall be mutated in the record of rights. This demand of Rs.150/- was an amount of bribe/ illegal gratification. It is further the say of prosecution that the complainant was of the opinion that he should not succumb to the demand of illegal gratification of the appellant and the appellant will not be paid. The complainant, therefore, approached the Anti Corruption Bureau (hereinafter referred to as 'the ACB') at Ahmedabad and lodged a complaint stating the details and after necessary preliminary inquiry and procedure,

the ACB Inspector arranged for the trap. It is alleged that the complainant was asked to go on 14th February, 1986 and, therefore, he had gone to the office of the ACB on that day and at about 03-00 p.m., the appellant was trapped. It is stated by the prosecution that the complainant and the Panch no.1-Rameshbhai Kantilal Modi entered into the office of the Panchayat, where according to the prosecution, the appellant demanded the amount of illegal gratification and on such demand, the muddamal currency notes stained with anthracene powder and marred numberwise were passed over to the appellant, who accepted the same and put them into the drawer of his table. Soon thereafter, on receipt of the signal, from the complainant, the office of the appellant was raided with trap leader ACB Inspector Shri Desai. The amount of illegal gratification was recovered from the drawer of the table besides where the appellant was sitting on the chair. It is further the say of the prosecution that on experiment which was carried out with the ultraviolet lamp (hereinafter referred to as

'the U.V. Lamp'), it was noticed by the members of the raiding party including the Panch no.2 that the finger tips of all the fingers of the right hand of the appellant were shining and other places like the articles lying in the drawer where the muddamal currency notes were kept along with some other papers written and prepared in the office of the appellant were also found stained with anthracene powder. The numbers of muddamal currency notes were thereafter compared with the numbers of those currency notes mentioned in the first part of panchnama and the trapping officer Shri Desai completed other formalities of seizure of muddamal documents, etc. and on completion of the investigation, the trapping officer found that the appellant has committed the aforesaid offence and, therefore, submitted his final report.

4. Shri M.R. Barot, learned senior counsel appearing for the appellant, after taking this Court through the entire evidence led by the prosecution and mainly the deposition of

the complainant as well as the panch no.1-Rameshbhai Modi, submitted that the prosecution has not proved the demand allegedly made on 07th February, 1986 for Rs.500/- with cogent and convincing evidence and the story of the alleged demand made on 07th February, 1986 is a created or got up story. Therefore, the ultimate settlement of the demand of bribe of Rs.150/- should be viewed with utmost doubt. The learned trial Judge ought not to have accepted the evidence led by the prosecution that the demand of bribe either for Rs.500/- or Rs.150/- was made on 07th February, 1986, as alleged and the appellant had called the complainant to come to his office on 14th February, 1986 on that day i.e. on 07th February, 1986. The defence of the appellant is that the complainant had come to his office against the demand of land revenue including the House Tax raised against him and his family. The demand was raised against the two different heads and to show the same there are documents on record. Under one head, the complainant and his family members were

required to pay something more than Rs.148/- and the learned trial Judge has failed in appreciating the explanation given by the appellant while placing his say under Section 313 of the Code of Criminal Procedure, 1973 and the documents tendered along with the explanation. It is alleged that the complainant had met appellant on 07th February, 1986 for getting the names of his brother and himself mutated in the record of rights after the death of his father. The father of the complainant had expired on 08th January, 1985, before about more than one year from the date of trap. It is neither the case of the prosecution nor the say of the complainant that he had ever met the appellant before 07th February, 1986 for getting their names mutated in the record of rights. There is sufficient evidence as to the demand of Rs.500/- or Rs.150/- on 07th February, 1986. In support of this submission, by reading evidence of the complainant as well as the Investigating Officer-Raiding officer Shri Desai, Shri Barot, learned counsel appearing for the

appellant, has pointed out the following facts :

(i) After the death of father of the complainant on 08th January, 1985, he had not approached the appellant for mutation or requested him to help him in this work. He had opportunity to see and meet the appellant for other work. It is the say of the appellant and has been admitted by the complainant that the appellant was meeting him and the family members of the complainant for recovery of Government revenue.

(ii) On 14th February, 1986, when the complainant approached the ACB Officer, he had not taken any document in support of his grievance like the death certificate of his father, obtained from the village Panchayat or any other document.

(iii) When it is specifically alleged by the prosecution that on 07th February, 1986, by the complainant the complainant had approached the appellant with a written application (Ex.31) for mutation of entry, the appellant had not accepted the said application and he was possessing the original application which was returned to him by the appellant, he had not taken the document to the office of the ACB while lodging the complaint.

(iv) For the reasons best known to the trapping officer, he took the complaint and had not insisted for the original application dated 07th February, 1986 allegedly written and prepared by him prior to the arrangement of the trap or trapping procedure on 14th February, 1986.

(v) The application (Ex.31) allegedly given to the appellant on 07th February, 1986 was recovered by the Investigating Officer from the complainant on 15th February, 1986, while recording his further statement at Ahmedabad. When the date 07th February, 1986, is found corrected by overwriting figure '7' in vernacular language Gujarati and when it is also found seeing the original that by erasing the day i.e. 'Wednesday', 'Friday' was written, no reliance could have been placed on such a document, and if this document is viewed with suspicion, the evidence of alleged demand of illegal gratification made by the appellant on 07th February, 1986, would not sustain. The prosecution is supposed to prove the allegation of demand made and it has failed, is the submission.

(vi) To strengthen the case of demand allegedly made on 07th February, 1986, the complainant has led conflicting evidence. On one hand, it is said that the complainant had gone to the office of the Talati-cum-Mantri i.e. appellant, and met him at about 01-00 p.m. when the demand in question of Rs.500/- was made by the appellant for work of mutating the entries in the record of rights and to justify the same, it was argued that his duty is in a private factory at a distance of about 7 kms. from his village and he had started from 03-55 p.m. but when the very complainant had admitted in the cross-examination that as he was to go for work of entry in record of rights in the office of the Talati-cum-Mantri i.e. appellant, he had not gone for his work on 07th February,

1986.

(vii) Nobody had prevented either the complainant or his brother to obtain the death certificate of the father of the complainant prior to approaching the Talati-cum-Mantri for the purpose of entry on 07th February, 1986 and it is in evidence that such certificate was obtained for the first time by the Investigating Officer himself as the applicant perhaps had not tendered it to the officer prior to the raid. The certified copy of the death certificate shows that it was obtained on 14th February, 1986.

5. The complainant has admitted in his evidence that he was interested in getting the names of his brother and himself entered in the revenue record and not of his mother or sisters. In the cross-examination, this fact has been admitted by him in paragraph no.17

of his deposition. He has further admitted that he had told the appellant that the names of his mother and sisters should not be entered in record of rights, though he has admitted that he had informed the appellant that his mother and sisters are alive. In turn, the appellant had told the complainant that the names of his mother and sisters shall have to be entered into the record of rights, and thereafter, their names can be deleted (dropped). He has also admitted that the appellant had told the complainant that for getting the names of his mother and sisters deleted, he will have to bring their signatures. It is the say of the complainant that he had not informed or requested the appellant to prepare the 'pedhinama' (pedigree). He has further submitted that he had obtained the death certificate of his father (Ex.90) on 14th February, 1986, but the appellant had insisted that the death certificate will be necessary for mutation of names on 'Varsai' (inheritance). The conversation that has come on record in paragraph no.17 creates clear cut impression

that the appellant was not going to do any favour to the complainant and he had insisted for legal way. According to Shri Barot, learned senior counsel appearing for the appellant, the complainant had falsely implicated the appellant in a serious case because he had developed enmity firstly by insisting on the point of entrance of names of mother and sisters of the complainant in the record of rights; and secondly, by making a constant demand of arrears of land revenue and House Tax and other Government dues, etc., for which the appellant was entitled to inflict the recovery. So the status of the complainant is not of an innocent citizen but of a person who had developed animosity internally and, therefore, he might have developed reasons to implicate the appellant in any serious offence. In support of this submission, Shri Barot has taken me through the relevant part of cross-examination at paragraph no.23, wherein he has admitted that when they were (he and panch no.1) in the office of the appellant (on 14th February, 1986), the appellant had told him that the

amount towards the land revenue and House Tax of the complainant is due and he was in arrears; and in response thereof, the complainant had told the appellant that he is aware about the arrears. He has also admitted that the Talati-cum-Mantri i.e. the appellant, had asked him to pay up the said amount and he was also threatened of attachment. In response of the same,the complainant has further admitted that he had told the appellant that he will pay the amount after making arrangements. However, he has denied that thereafter he had given Rs.150/- to the Talati-cum-Mantri i.e. appellant herein. In paragraph no.12 of the deposition, it has come on record that in the year 1985, he had paid an amount of Rs.200/- as part payment against the arrears of revenue. At that time, an amount of Rs.297-48 ps. was to be paid and since then, they have not paid any amount against the land revenue. He has admitted that as on 31st July, 1986, the total arrears of land revenue only was of Rs.147-83 ps. and they were also in arrears of Rs.283-00 ps. of House Tax

uptill 01st April, 1986. He has admitted that the land revenue and House Tax remained in arrears as they had interse family disputes and the amount of Rs.200/- was paid in the year 1985 by one of his brothers namely Babubhai. In paragraph no.13 of his deposition, the complainant has further admitted that because of one litigation pending in the Court of Mamlatdar, Dholka, which was a tenancy case, he was often meeting the appellant. He was also meeting the appellant in the office of the Panchayat at village Santhal. The say of Shri Barot is that when the appellant was meeting the complainant frequently, why he was not asked or requested to help the complainant in getting the names of his brother and himself mutated in the record of rights till 07th February, 1986, is the crucial question. Though the complainant has denied the suggestion, it is the say of the complainant that he had requested the appellant to help him in the tenancy case which was pending before the Mamlatdar. But the appellant had denied and he was informed that he cannot

help the complainant or his family in a tenancy proceeding.

6. Shri Barot, learned senior counsel appearing for the appellant, has drawn attention of the Court that one admission made by the complainant wherein he has accepted that on 13th February, 1986 i.e. a day prior to the day on which the trap was arranged, his family was served with a notice through the peon of the Panchayat and this notice was served/ collected by his cousin brother Ambalal Manilal. The notice dated 13th February, 1986 has not been produced by the complainant. The Investigating Officer has not produced his case diary of investigation and the Court can reasonably believe that this notice must have been recovered during the course of investigation by Shri Desai. If Shri Desai has recovered the said notice and not produced before the Court, it would become a question of material suppression and if such recovery was made on 13th February, 1986, this infirmity would positively go against the prosecution because the

complainant himself has admitted that such a notice on previous day was served. Prior to 13th February, 1986, a detailed statement of brother of the complainant i.e. Ambalal Manilal, was recorded by the appellant and the signature of Ambalal Manilal was also obtained. This Ambalal Manilal ought to have been examined by the prosecution as witness. The learned trial Judge could not have ignored the document dated 13th February, 1986, which is detailed statement without accounts and figures produced with the written explanation given by the complainant. This document at Mark 48/6 clearly shows that the family of the complainant was in arrears of certain amount under two different heads; one for Rs.147-82 ps. towards land revenue and another Rs.282/- towards three other minor heads like House Tax, Light charges, etc. In this document, some amount is shown as an amount of arrears of last years, which has been referred to as “Pa-ba” in vernacular Gujarati, meaning thereby, “past dues”.

7. The Court while appreciating the say of the

appellant and evaluating the case of the prosecution ought to have considered the scheme of Section 5(1)(d) of the Act, where the word 'obtain' is used. While making this submission, Shri Barot has placed reliance on one decision of the Apex Court in the case of ***Bhagwan Singh v. State of Rajasthan, reported in AIR 1976 SC 985***. He has taken the Court through the relevant paragraph no.7 of the cited decision. According to Shri Barot, the prosecution is under legal obligation to prove beyond doubt that the amount or valuable thing or pecuniary advantage obtained by the accused is an illegal gratification and he has obtained it for himself or for any other person. In the present case, the appellant has reasonably established that the amount given to him and kept in the drawer by him, was tendered to him against the land revenue; otherwise in the present case of a stranger who was introduced as a person serving with the complainant in a factory, who was not residing at village Santhal, the appellant

neither would have given threat of attachment to the complainant, nor he would have accepted the amount in presence of the third person, a stranger. It is not the say of the complainant that when he entered into the office of the Panchayat and they were talking, the appellant had not attempted to know as to what is the identity of the third person accompanying the appellant. The complainant is emerging as an unreliable witness, is also the argument of Shri Barot because he has suppressed some important aspects even from the Investigating Officer and only with a view to corroborate the complainant, Shri Desai, Investigating Officer, has also not tried to depose objectively. Shri Desai is an important trap witness and his evidence is required to be scanned closely because he is the person interested in the result of the trap i.e. success of the trap, like the complainant. The complainant says that he had obtained certified copy of the death certificate from the appellant on 14th February, 1986 and he has denied the suggestion that he had never

obtained the death certificate even on 14th February, 1986. The Investigating Officer Shri Desai states that he has obtained the certified copy of the death certificate from the appellant. The complainant himself admits that his family is in arrears of land revenue and frequent demands were made by the appellant. The brother of the complainant was served with a notice on 13th February, 1986. It is in evidence of the very cousin brother Ambalal Manilal that his statement was recorded on 10th February, 1986. It is not a matter of dispute that the family of the complainant and his cousin brother Ambalal Manilal is owning agricultural lands and residential premises in joint names of heirs of their ancestors and it emerges that therefore only there were some disputes as to the liability to pay up the amount of land revenue. Even then the Investigating Officer Shri Desai has stated in his deposition that he was not aware about any arrears of land revenue on the complainant or his family. This say of Shri Desai, Investigating Officer, is sufficient to disbelieve his

version for being unfair in carrying out investigation. The Court is not supposed to or legally authorised to ascertain any fact or aspect by reading police statement of any witness and only source with the Court would be of case diary through which the transparency of the Investigating Officer can be ascertained. A pointed question could have been asked to the Investigating Officer Shri Desai that he had recovered the notice dated 13th February, 1986, served to the family of the complainant through peon of the Panchayat and signed by the appellant and he has suppressed the same because it is reflected in the complaint i.e. FIR (Ex.42) that the complainant has disclosed that he is in arrears and he has to pay the House Tax of about Rs.200/- and he is going to pay this amount subsequently and the appellant-Talati-cum-Mantri has not to recover the amount of House Tax. This statement made in the complaint if is appreciated in the background of the evidence led by the complainant as well as Shri Desai, both are found saying falsehood. As discussed earlier, the

complainant has suppressed that he is also to pay the land revenue to the tune of Rs.147-83 ps. and about Rs.283/- against the House Tax, etc. and the notice was served by the appellant- Talati-cum-Mantri, even then he disclosed before the police that the appellant is not entitled to recover the House Tax. If the appellant had no authority to recover the House Tax, which authority was entitled to recover the same, was the question which ought to have been replied by the prosecution. In paragraph no.18 of the deposition, Shri Desai has audacity to say that for the land in question, meaning thereby, for which the mutation entry was entered into record of rights, if the complainant was to pay the land revenue and he was in arrears, then he was not aware about the same. This very witness has shown ignorance as to the service of notice dated 13th February, 1986, which was also signed by the Sarpanch of the very village. He has also shown ignorance that he was not aware about the interse family disputes. It is in evidence that further statements have been

recorded at Ahmedabad. Even the statement of Panchas have been recorded at Ahmedabad on 14th February, 1986, is the say of Shri Desai (paragraph no.19 of his deposition). He has denied that the accused had responded immediately that the amount was given to him against the Government dues. Shri Desai has also denied that the appellant had also informed him that the complainant is still in arrears of land revenue. These answers given by the Investigating Officer could have been scanned only if the learned trial Judge or even this Court is made equipped with the case diary. In such a sensitive case, the case diary should accompany the chargesheeet or at least on the date of deposition, the Investigating Officer should bring and state in examination-in-chief that he has brought the original case diary with him so that he can be confronted with the details mentioned in the case diary or at least the Court can peruse the case diary. About 13 documents have been tendered by the appellant with List Ex.48 along with written explanation given to the trial Court. The appellant is not

supposed to prove each document tendered, if the documents are otherwise found reliable because the accused is supposed to place probability before the Court to rebut the presumption even if raised under Section 4 of the Act. On the contrary, in view of the facts stated by the complainant in the cross-examination and the answers given by the complainant as to the events which have occurred prior to acceptance of muddamal currency notes, the learned trial Judge ought to have held that the prosecution has not proved successfully that the amount was given to the appellant as illegal gratification.

8. It is submitted by Shri Barot, learned senior counsel appearing for the appellant, that two papers which were seized by the Investigating Officer; one wherein pedhinama of the complainant is written by the appellant and the other where the signatures of the mother and sisters of the complainant were to be obtained, so that their names can be deleted in future, could have been prepared by the appellant as the complainant

had cleared the amount payable under the land revenue. It has been brought on record by the appellant that he was under tremendous pressure of recovery by the superiors, especially the arrears against the land revenue and to prove this fact situation, he has tendered a xerox copy of the letter dated 05th October, 1985, addressed to the Taluka Development Officer, Dholka, by the office of the District Development Officer vide Mark 48/5. The endorsement below the said letter, according to Shri Barot, is more relevant, whereby all the Talati-cum-Mantris of villages under Taluka Dholka were directed to do strict execution of the same and to effect speedy recovery of the Government dues and they were also directed to send regularly details in a monthly schedule on the first day of each English calendar month. If the appellant had initiated some procedure so that the entry proceedings can move further, would not make him responsible for committing any wrong and only on the strength of recovery of these two papers/documents, the presumption could not have been raised

against the appellant that the amount of Rs.150/- obtained by him was nothing but an illegal gratification. It is argued that unless the land revenue amount is cleared, mutation entries are neither being entered into village records nor certified by the superiors. In the present case, the complainant was insisting for deletion of names of his mother and sisters. Firstly, he was not ready to get their names entered in the record of rights and was hesitant in obtaining the signatures of his mother and sisters. In such a situation, the appellant would not have helped him as he was not authority to help the complainant. The stage was very premature. So the animosity that had been developed in the mind of the complainant on the ground of threat of attachment given by the appellant along with his act of recording the statement of cousin brother of the complainant and service of notice dated 13th February, 1986, had led him to implicate the appellant in the serious crime.

9. According to Shri Barot, learned senior counsel appearing for the appellant, if the story of demand made by the appellant on 07th February, 1986, in this background is found unreliable, then the evidence as to the demand allegedly made on 14th February, 1986, automatically becomes very weak piece of evidence. In response to the evidence as to the demand allegedly made on 14th February, 1986 i.e. on the day of trap in presence of panch no.1, Shri Barot has argued that the evidence of panch no.1 and the complainant is not consistent on the point of demand. There is conflict in evidence in respect of the accurate time as to when the alleged demand was made, and immediately after arrest, the amount was found from the drawer and under those muddamal currency notes the receipt books were lying. The appellant would have kept the amount in his pocket instead of putting the same in the said drawer. It is true that he had started preparing receipts instead of pedhinama or rojnama requesting the revenue authority to delete the names wherein the signatures of mother and sisters

of the complainant were to be obtained. But this by itself would not make the acceptance illegal or the acceptance of illegal gratification, because it is in evidence that on explanation given by the appellant, the amount recovered from the pocket of the appellant was tallying with the receipts issued by him against the recovery and when the Investigating Officer found that there is nothing excess and the amount found from the pocket is equal to the amount recovered against the receipts issued, neither the receipt book nor the amount which was found with the appellant was seized. It would be beneficial to refer to relevant aspects pointed out by Shri Barot, which according to Shri Barot is conflicting as to the demand allegedly made on 14th February, 1986 :

(1) There is conflict in evidence as to whether the appellant had asked the complainant to give him the amount brought by him.

(2) Whether only two papers were

lying on the table or two papers were taken out by the appellant for pedhinama.

(3) Whether both the papers were given to appellant to obtain signatures or one of the papers out of the two was given to the complainant.

(4) Whether the story of preparation of pedhinama, etc. uttered by there two witnesses i.e. complainant and the panch no.1, gets corroboration from the writing which is found on the muddamal papers recovered by the ACB Officer.

(5) At what point of time the appellant had started writing pedhinama ?

(6) When the complainant left the office of the appellant and re-entered ?

(7) What panch no.1 was doing after the complainant left and returned in the office of the appellant ?

(8) At what point of time the complainant gave signal ? Whether after passing of the muddamal currency notes or after some time and at the end of certain discussion that had taken place.

(9) Why the details given by panch no.1 are missing in the examination-in-chief of the complainant ?

(10) Who took out the currency notes from the drawer and when ?

(11) Why both the papers are not stained with anthracene powder though it is the say of the prosecution that after accepting the amount, the appellant had started writing

pedhinama and even ball-pen was stained with anthracene powder ?

I would like to state relevant part of the evidence led by two material witnesses i.e. complainant and panch no.1 while dealing with the submissions made.

10. This is perhaps one of the rarest cases where at the time of raid or alleged success of the ACB trap, the accused is not found in possession of any excess amount, than the actual recovery made by him in the capacity of a public servant against the Government revenue because it is in evidence that the amount found from his pocket was as per the receipts issued by him. The figures of amount had tallied with the figures of amount recovered by that time and the defence of the appellant is that on the date of incident, the appellant had come to him and tendered the amount of Rs.150/-. The argument of Shri M.R. Barot is that on previous day, a notice was served and on 10th February, 1986, as

discussed, a strong warning was given to one of the co-owners of the property and his statement was recorded by the appellant. Therefore, before entering into any conversation as to the mutation of entry in the record of rights, for the sake of argument if it is accepted that the appellant had initiated talk with the demand of amount claimed i.e. claimed by notice, then it cannot be equated with the demand of bribe or illegal gratification because the appellant was not helping to the complainant in any manner by not entering the names of the mother and sisters of the complainant. On the contrary, it is in evidence of the complainant himself, as discussed earlier, that the appellant had stated to the complainant that the names of the said female members shall have to be entered in the record of rights first and only thereafter, their names can be deleted. So the evidence as to the alleged demand if is held to be acceptable to some extent, then in given circumstances, it cannot be said to be a cogent and convincing evidence as to the

demand of illegal gratification. There is ample force in the submission of Shri Barot that “the appellant might have talked about chalk and the panch might have understood it as cheese”. The question, therefore, posed before the Court is whether anybody else than the complainant was aware about the strong demand raised by the appellant from the complainant and/or the family which was in arrears of Government land revenue and the appellant was under pressure of recovery of Government dues by his higher ups; and whether the Panch no.1 or any other member of the raiding party including the ACB Inspector Shri Desai was aware about the recording of statement of Ambalal Manilal on 10th February, 1986 and notice served to the complainant and his family qua the demand of the arrears of land revenue equal to Rs.147-83 ps. + Re.1/- as notice charges or not. It is mentioned hereinabove in earlier paragraphs that the Investigating Officer has not remained fair qua this part means his knowledge as to such or similar demand of revenue. The papers supplied to the Court with report under

Section 173, on the contrary, reveal that the notice dated 13th February, 1986 served to the family members of the complainant on the previous day of the trap, was recovered from one of the witnesses whose statement was recorded but for the reasons best known to the public prosecutor that witness Ambalal Manilal has neither been examined in the present case nor he was called by the Court as Court witness under Section 311 of the Code of Criminal Procedure, 1973. It is true that the learned Presiding Judge should go very slow in examining the witnesses named in the chargesheet as Court witnesses and it should not look that the learned Presiding Judge has assumed the role of either Public Prosecutor or defence counsel. But ultimately, the endeavour should be of finding out the truth. The arguments advanced by Shri Desai that when the appellant was keeping all recovery receipts from the villagers in his pocket and as such all the amount recovered from the land revenue or House Tax, etc. in his pocket, why the muddamal currency notes were not kept in his

pocket along with the other amount recovered by him. Keeping of amount at some other place than his pocket shows a difference than normal conduct. This argument is not found a valid or strong one to raise any presumption against the appellant and such inference would become a surmise or conjecture because the amount was kept in the drawer and at the place where receipt books were kept. Part payment of Government dues is permissible and on earlier occasion, the family of the complainant has paid the Government revenue in part. Any one member of the family, it appears that, was going to the office of the revenue authority and paying some amount against the arrears. The appellant was a bit harsh this time; and over and above, he had expressed disinclination against the wish of the appellant. It emerges from record that the complainant must have expressed his desire that he and his brother would like to see that the names of their mother and sisters are not entered in the record of rights at all. So the question of deletion of it at a subsequent stage would not arise at

all because in the oral evidence during the course of cross-examination, the conversation that had taken place between him and Talati-cum-Mantri has come on record and that part of the evidence has been discussed hereinbelow (Paragraph nos.14 and 15).

11. The second argument of Shri Desai, learned Additional Public Prosecutor, bears some logic that on 07th February, 1986, the duty of the complainant in his factory was in the second shift i.e. 03-55 p.m. Also PW-Bakorbhai Kalidas Patel, office clerk of Shri Hans Alloys Pvt. Ltd., where the complainant was serving, has proved the document Ex.37, which shows that on 08th February, 1986, the complainant was on leave. In the same way on 13th February, 1986, when the notice was served by the appellant demanding the Government dues, after the statement of Ambalal Manilal recorded by the appellant on 10th February, 1986, the complainant was on leave. In the same way, on 14th February, 1986, i.e. on the date of trap arranged, he was on leave and 15th February, 1986, being

Saturday, it was a holiday for him. It is mentioned as “H”. This type of endorsement is there on 08th February, 1986 also. It appears that each Saturday was holiday for the complainant. On 07th February, 1986, he had joined duties at 03-55 p.m. and he had worked upto 12-05 a.m., means upto midnight. So it was possible for him to go to the office of the Talati-cum-Mantri at 01-00 p.m. as stated by him. But in the cross-examination, he has stated that he was on leave on 07th February, 1986. This answer should be in reference to the version given by the complainant in paragraph nos.1,7 and 15 of his deposition, wherein he has stated that as the names of three heirs were to be entered in the record of rights, he had given application to the appellant on 07th February, 1986 at about 01-00 p.m. Seventh is the salary day of the complainant. The complainant had told the appellant that he would pay the agreed amount i.e. Rs.150/- out of his salary since seventh was his salary day. Thereafter, they have decided to meet on 14th February, 1986 (paragraph no.1). He has

stated further in paragraph no.7 of his deposition that he was getting an amount of Rs.70/- per day from Shree Hans Alloys Pvt. Ltd.. On that day he was on leave and he received the salary on 09th February, 1986. The amount of Rs.150/- which was tendered to the Police was from the very salary. He has stated that he had gone to his job on 07th February, 1986. So in this very paragraph, the contradictory version is given by this Court witness and in paragraph no.15, he has categorically admitted that he was being paid salary every month. At that time, he had drawn salary on 09th February, 1986 as he had not gone for work/ job on 07th February, 1986. According to him, the question whether on 07th February, 1986, the complainant had gone to job or not and whether he was confused whether he had actually gone on job on 07th February, 1986, is not a matter of much relevance. The crucial aspect emerging from the confusion created by the complainant makes the case of the prosecution doubtful as to the demand of bribe on 07th February, 1986 because he has admitted in the cross-

examination, over and above, the above discussed writings and erasures in the application prepared and allegedly given to the appellant on 07th February, 1986, that he had never talked about the demand of bribe made by the appellant with anybody. It was possible for him to disclose this fact to his kiths and kins who were supposed to contribute, or to say his real brother Khodabhai Nagarbhai. When he had decided not to give amount of bribe on 07th February, 1986 itself, he could have disclosed this fact to his brother. It is claimed by him in paragraph no.5 of the deposition that the application which was given to the appellant on 07th February, 1986 was with him only and he had not even disclosed the fact of returning the application after making demand of bribe amount to anybody. So in view of the nature of evidence led by prosecution through the complainant as to the complainant's visit to the office of the Panchayat on 07th February, 1986, it is not possible for this Court to concur with the finding that there is cogent and convincing evidence as to

demand of amount of bribe on 07th February, 1986. On the contrary, it emerges from record that while giving the complaint on 14th February, 1986, that his visit to Panchayat office on 07th February, 1986 or any round about date has been used as a foundation stone to develop the theory of the demand of bribe made on that day of visit. The possibility of insistence of payment of total Government dues prior to making any change in the record of rights may have resulted into non-acceptance of the application signed by only two brothers. This application Ex.31 does not disclose that the complainant or his brother had ever intended even to get the names of their mother and sisters entered. The oral version before the Court that his visit to the office of the Panchayat, to get the names of both the brothers and the mother and sisters mutated in the record of rights, appears to be falsehood. It is difficult for this Court to accept the say of Shri A.J. Desai, learned Additional Public Prosecutor, that concoction if was intended, then a fresh application mentioning the date of 07th

February, 1986, could have been prepared in consultation with ACB Inspector by the complainant and his brother. But it is known principle in the criminal jurisprudence that the wrong doer always either leaves some evidence or takes away some evidence. If it is found that the evidence as to the demand of bribe on 07th February, 1986 is very weak and not convincing, then it would vitally affect the demand of bribe made by the appellant. It is true that in a given case, the acceptance of amount of bribe impliedly corroborates the evidence of demand. The hidden demand can be inferred but for that the prosecution is supposed to lead convincing evidence as to the acceptance of amount or a thing as bribe or illegal gratification. Therefore, in the present case, the evidence as to acceptance of amount of Rs.150/- by the appellant which proves the acceptance of bribe or illegal gratification, was required to be scanned closely by the learned trial Judge.

12. Plain reading of the judgment and order under

challenge gives an impression that the evidence as to the acceptance of amount led by the prosecution is not that seriously disputed by the appellant and the attempt to seek justification of the acceptance has weighed much with the Court. The learned trial Judge has, therefore, mainly considered the element of presumption that could have been raised against the appellant under Section 4 of the Act. Further submission made by the learned senior counsel appearing for the appellant after giving a look to the muddamal called for from the trial Court, obviously has made the point advanced by Shri Barot, an important point, that this is not a case where the learned trial Judge ought to have held that a presumption under Section 4 of the Act can be raised on the set of facts proved in the present case. Alternatively, it was possible for the trial Court to observe that even if the presumption is raised, it has been rebutted specifically showing a probability.

13. The evidence as to the demand of illegal

gratification made by the appellant on 14th February, 1986, is satisfactory or not, needs fresh appreciation. In the case of ***Panalal Damodar Rathi, reported in AIR 1979 SC 1191***, it has been observed that the conversation between the accused and the bribe giver if is the part of the story of the prosecution, then the exact conversation, substantially should be proved and the evidence in this regard should be consistent of all witnesses examined on the point including the panch witness. It is true that panch witness and the bribe giver/ complainant are not supposed to reproduce the exact words of conversation parrot-like. The evidence as to the actual words used, the point of time and the sequencewise conversation at least should be there on record. So the evidence can be accepted as cogent and convincing evidence as to the demand. For the sake of brevity and convenience, I would like to refer to relevant paragraph nos.8 and 9 of the cited decision as under :

“8. There could be no doubt that

the evidence of the complainant should be corroborated in material particulars. After introduction of S. 165-A of the I. P. C. making the person who offers bribe guilty of abetment of bribery the complainant cannot be placed on any better footing than that of an accomplice and corroboration in material particulars connecting the accused with the crime has to be insisted upon. It has to be borne in mind that the marked notes were recovered from the possession of the second accused and not the appellant. It is the case of the prosecution that the marked notes were paid to the second accused for the purpose of being handed over to be the appellant. The evidence of the complainant regarding the conversation between him and the accused has been set out earlier. As the entire case of the prosecution depends upon the acceptance of the evidence relating to the conversation between the complainant and the appellant during

which the appellant demanded the money and directed payment to the second accused which was accepted by the complainant, we will have to see whether this part of the evidence of complainant has been corroborated. The prosecution relies on the testimony of P. W. 3, the Panch witness, as corroborating the evidence of the complainant on this aspect. It may be reiterated that according to the complainant when he asked the appellant to relieve him from the case and to see that he was given a lesser sentence, the appellant asked him if he had brought the money and the complainant told him that he had and the appellant asked the complainant to pay the money to Dalvi, the second accused, and asked the second accused to receive the money from the complainant. On this aspect of the evidence of P. W. 3 is as follows:

> *"They saw the appellant coming out of the court hall*

and the complainant informed them that he was the Police Prosecutor. Then there was a talk between the complainant and the appellant in the varandah. The witness was at a distance of 3 to 4 feet from them and was in a position to overhear the conversation. According to the witness he heard the appellant asking the complainant "Have you come", the complainant then said "Yes". The witness further heard the appellant saying that he would see that heavy punishment is not inflicted and the case as it is, was difficult. The complainant had then asked the appellant whether his work will be achieved. The appellant assured him in the affirmative. The appellant told the complainant to give

what was to be given to the second accused."

9. It will be seen that the version of the complainant that the appellant asked the complainant whether he had brought the money and that the complainant told him that he had and that the appellant asked him to pay the money to the second accused is not spoken to by the Panch witness P. W. 3. According to Panch witness on the complainant asking the appellant whether his work will be achieved, the appellant assured him in the affirmative and the appellant told the complainant what was to be given to the second accused. It is significant that P. W. 3 does not mention about the appellant asking the complainant whether he had brought the money and on the complainant replying in the affirmative asking the complainant to pay the money to the second accused. Omission by P. W. 3 to refer to any mention of money by the appellant

would show that there is no corroboration of testimony of the complainant regarding the demand for the money by the appellant. On this crucial aspect, therefore, it has to be found that the version of the complainant is not corroborated and, therefore, the evidence of the complainant on this aspect cannot be relied on."

14. In the present case, the complainant in his examination-in-chief has narrated the events occurred in the office of the appellant on 14th February, 1986 in paragraph no.6 of his deposition. He has inter alia stated as under:

"6. ... ... Thereafter, when we went to the Panchayat Office, Talati Saheb was sitting alone. I told the Talati Saheb to get completed the work of 'Varsai'.

... ...

Thereafter, the Talati had asked me whether I had brought the amount as

demanded by him. So I replied in affirmative. Thereafter, I paid the amount to Talati. It was the amount of rupees one hundred fifty.

... ...

The Talati by taking this amount had put the same in the drawer of the table. Thereafter, as Shri Desai Saheb had instructed me to give signal, I had signed by itching my head by right hand.

... ...

On my giving signal, Shri Desai Saheb and raiding party personnel had come there. Thereafter, Shri Desai Saheb had given his identity to the Talati and instructed him not to make any movement in any manner. The books were checked. Notes were recovered from the drawer of the table.

... ...

When I paid Rs.150/- to the Talati, immediately by taking two blank papers, he had made pedhinama (pedigree) on them and out of these

two papers one was given to me and the another was kept by him, and I was instructed to get the signatures of the said persons named in it. This event had taken place prior to giving money. Thereafter, a panchnama was drawn there. The task of taking out the currency notes and checking the books was done by Shri Desai Saheb. The currency notes which were recovered were seized. The books with Talati and an amount of Rs.273/- were recovered from the Talati but the same were not seized. So far as the amount of Rs.273/- is concerned, the Talati had told that the said amount was received towards the Taxes and therefore, the same was returned to the Talati."

15. In the conversation of the panch no.1-PW-2, Rameshchandra (Ex.32), he has inter alia stated as under :

"2. ... ... When I and complainant went to the office of the Panchayat,

the Talati was sitting. The Talati was alone in that room at that point of time. The complainant had told the Talati to get completed his work of 'Varsai'. The Talati asked the complainant whether he had brought the amount as demanded by him for this work. The complainant replied in affirmative. Then the Talati had said to give him. The amount of Rs.150/- which was kept the complainant in his pocket were given to the Talati with his left hand. The same were accepted by the Talati with his right hand and the Talati had counted the said notes.

... ...

Thereafter, by taking the two papers which were lying on the table of the Talati, the pedhinama was prepared by the Talati i.e. the names mentioned in this pedhinama were written by the Talati with his ball-pen.

... ...

After preparing this pedhinama, the Talati had instructed the complainant to get the signatures of the persons

who are named in this pedhinama against their names and thereafter, to come to his residence at Dholka on 24th inst. after 04-00 p.m.

... ...

The complainant thereafter by keeping the pedhinama on the table had gone out. The complainant had come in after some time and after sometime, the raiding party personnel had come in where the Talati was sitting. The Police Inspector Shri Desai had given his identity and the Talati was instructed by him not to make any movement in any manner.

... ...

When Shri Desai Saheb had asked me about this event, I had told him about the same."

15.1 Therefore, the evidence of these two witnesses given in examination-in-chief should be read in reference to the answers given by these two witnesses given during the course of cross-examination. It is observed

in more than one case that panch witness in an ACB case being a Government employee keeps tendency to support the case of the prosecution for one or the other reason. Even the plain reading of examination-in-chief shows two different pictures and the sequence of events. There is no dispute that after entry of the complainant in the office of the Panch no.1, the appellant had not inquired as to who is the person accompanying the complainant. The Panch no.1 is not the resident of village Sathal and, therefore, he was a stranger and some discussion is made in the foregoing paragraphs and it is the say of the prosecution that even then the appellant straightway told the complainant as to whether he had brought money as asked for by him. These words were uttered in response to the words uttered by the complainant whereby he had requested to do the work of entering the names in record of rights i.e. 'Varsai'. It means that the request to do work as to the Varsai was made, in response thereof the demand was made. It is settled practice and even there is no dispute on this point by the

State that no mutation entry is made or confirmed by the revenue officers in Government revenue record and village record of rights, unless the arrears of land revenue is paid. According to the complainant, after acceptance of amount and putting the same into drawer of the table, the complainant had given signal by etching his head. He had done that as instructed by the Trapping Officer and as he had given the signal, Shri Desai and raiding party personnel had entered the office of the appellant and the appellant was asked not to move or to do any activity; and the ACB Inspector had taken out the muddamal currency notes from the drawer. He had also checked the books. As per the complainant, as he had given an amount of Rs.150/-, the appellant had taken two plain papers. Out of the two, one was given to the complainant and the complainant was asked to obtain the signatures of his mother and sisters in the said paper. Meaning thereby, one of the two papers which were prepared by the appellant was given to the complainant asking him to get the signatures in the said paper and to

come. The words used in vernacular language Gujarati also indicates simultaneously that he should just go and bring the signatures. It would be beneficial to reproduce these words for the sake of convenience which are as under:

> *"and I was instructed to get the signatures of the said persons named in it"*

15.2 When mere recovery of money divorced from circumstances under which it is paid is not sufficient to convict the appellant. When other substantive evidence led by the prosecution is not fully trustworthy, it becomes obligatory on the part of the Court to bring the explanation offered by the appellant for receipt of the alleged amount of bribe. The question that arises for consideration in such cases is whether the explanation given can be said to have been established or not. It is true that the same can be established by preponderance of probabilities Here the favour or disfavour

by the appellant in mutating the names of two male members of the family of the complainant namely the complainant himself and his brother, does not fall in the competence of the appellant. It is true that the question whether favour or disfavour was within the competence of the appellant is irrelevant, provided there is clinching evidence as to demand of bribe. So the conviction should be based on the basis of recovery coupled with other compelling circumstances. So in absence of attending circumstances, a conviction cannot sustain where there are circumstances which indicate that probably the defence might be true. In sum and substance, there must be acceptable and clinching evidence showing that there was demand of bribe and the appellant accepted that amount with a motive or reward of doing an official act or showing a favour to the complainant in exercise of his official function.

16. According to Panch no.1, he had given the improved version than the complainant; and has stated that the appellant had told the

complainant as to whether he has brought the amount **for this work** as asked for (emphasis supplied). The words “for this work” were missing in the version of the complainant. It has also not been stated by the complainant that the appellant had told the complainant, “then give it”. The complainant has not stated that the appellant had counted the currency notes given by the complainant. According to Panch no.1, two blank papers were already lying on the table as if they were already kept ready. There was no reason for the Talati to keep only two papers ready on the table anticipating everything. It also does not appear that co-incidentally two papers were lying because the complainant had said that two papers were taken by the appellant. According to panch no.1, after preparing the pedhinama, the appellant had asked the complainant that he should obtain the signatures against the names of persons named in the pedhinama and then he should come on 24th February, 1986 at about 04-00 p.m. to his residence at Dholka. This part of conversation and conduct of the appellant is

not reflected in the examination-in-chief of the complainant. In the same way, there is nothing in examination-in-chief of the complainant that immediately thereafter, the appellant had assured the complainant that his work of 'Varsai' will be done. As per the panch witness, after all these formalities and conversation, the complainant had given the difference by keeping the papers on the table and sometimes thereafter he had again entered the office of the appellant and after his re-entry in the office room, after sometime, the raiding party had entered where the appellant was sitting. The complainant has not said that Shri Desai had any conversation with panch no.1 prior to initiation of search or test process by using U.V. Lamp.

17. In the case of ***Jitendrakumar Jayantilal Dhruva v. State of Gujarat, reported in 2005(2) GLH 787***, of course while confirming the judgment and order of conviction and sentence , the Court has observed as under :

“5(ii) ... ... Though the words told during conversation are not found exactly similar in the deposition of the complainant and panch no.1, however, substantially both these witnesses have remained consistent. The conversation had taken place on "the work of bore erected on the land of the complainant and it was asked by the accused whether the complainant has brought money." So this is a case of demand made specifically by the appellant-accused in presence of panch no.1. So there is no contribution on the point that a demand was first made by the appellant, so it cannot be said legally that the story told by the complainant and the panch no.1 is contradictory or materially different. It is true that on such occasion, limited words are being used and conversation normally does not last for more and, therefore, there is a little scope of missing relevant part of discussion or conversation.

However, it would not be legally proper to accept that both the witnesses should reproduce the exact words chronologically and in the same sequence when they are asked to state the facts on oath before the Court. When they are materially corroborating with each other and the subject referred to, are found same, then substance led by them if found consistence then their evidence normally should not be discarded. ... ...”

In the present case, the Court is not satisfied with the strength in the evidence led by the prosecution.

18. It is important to note that as per the case of the prosecution only one paper of pedhinama was found stained with anthracene powder during U.V. Lamp examination. When it is the say of the complainant that one paper was given to him by the appellant and he was asked to get the signatures in that paper out of the two prepared by the appellant, the

presence of anthracene powder marks on pedhinama paper would not help the prosecution nor it would prejudice the defence of the appellant because the complainant had already detached the muddamal currency notes as they were given to the appellant prior to his acceptance of the papers given by the appellant for getting the signatures. Even in absence of complainant, the appellant had never attempted to converse with Panch no.1. When the panch no.1 has said that the appellant-Talati-cum-Mantri had left the office for sometime by keeping the papers on the table, there was some opportunity with the appellant to converse with the strange person who was sitting in his office. So the entire conduct of the appellant does not appear to be a conduct of a guilty person. Shri A.J. Desai, learned Additional Public Prosecutor; Shri M.R.Barot, learned senior counsel appearing for the appellant; and the Court have seen the mumddamal papers heavily relied upon by the prosecution which were prepared by the appellant and one of which was given to the complainant for getting the

signatures of his mother and sisters. For the sake of convenience, before putting both the papers into a sealed envelopes, xerox copies in three sets were taken out on the instruction of the Court. One set was given to Shri M.R. Barot, learned senior counsel appearing for the appellant, another copy was given to Shri A.J. Desai, learned Additional Public Prosecutor, and the third has been kept by the Court for perusal. On first look, it appears that practically nothing was prepared meticulously which can form part of Government record. It was a sketchy and hazy work like a type of guidance, as to in what manner the pedhinama should prepared and how a party should sign and it should be in which format. It is accepted practice that the pedhinama is to be prepared by the party and reputed persons of the village like Sarpanch, Talati, etc., who should also confirm the declaration made in the pedhinama. In Ex.31 application, there is no disclosure of the names of mother and sisters. On receipt of the pedhinama, the appellant-Talati-cum-Mantri on confirmation

of independent person simply countersigned the pedhinama. Of course, this part of evidence is not available on record but the Court cannot ignore the Government guidelines and circulars issued and the scheme of the Bombay Land Revenue Code and the basic scheme of Section 135 and Section 135(B) and more particularly, sub-section (C) of the Code.

19. The documents collected as muddamal and perused by the Court does not indicate that any special favour or anxiety was shown by the appellant against the acceptance of Rs.150/- It is important to note that Rs.150/- was not a part payment even as per the case of prosecution, otherwise it was possible for the prosecution to argue that as the amount was part payment, the appellant had initiated the work and on receipt of the full amount of illegal gratification, he would have entered the names. The suggestion made by the appellant, after insisting entrance of names of mother and sisters of the complainant in the record of rights initially also appears to be a guidance and

procedure suggested to the complainant that he can get the names of female members deleted at a subsequent stage and for that what procedure is required to be followed. It is expected of a Talati-cum-Mantri when he is supposed to deal with the rustic, illiterate and uninformed agriculturist. Therefore, the exercise done by the appellant in response to the full receipt of the arrears of land revenue under one of the heads whether should be viewed against him, was a crucial question and it appears that the learned trial Judge has not appreciated the entire aspect in the more probable background and perspective; otherwise as the appellant had received full amount then the complainant himself would have insisted and the appellant would have acted in that manner and direction; and the muddamal paper collected by the police would be a perfect writing required as per the accepted practice. Each detail could have been mentioned cleanly and clearly in the said paper and no hazy or sketchy work could have been done. So the conflict and contradictions in the evidence

of the complainant and his cross-examination, Panch witness and his cross-examination, and the conflicts in the examination-in-chief in reference to the events occurred in the office of the appellant on 14th February, 1986, has taken this Court to believe that nothing exact with details has come on record as to the events occurred on 14th February, 1986 after the entry of the complainant and panch no.1 in the office of the appellant and recovery of muddamal currency notes was made from the drawer of the appellant because according to Panch no.1, he is the person who took out the notes from the drawer and on the other hand, the say of the complainant is that Shri Desai took out the currency notes from the drawer. One witness i.e. complainant has said that the books of accounts were checked by Shri Desai and thereafter, U.V. Lamp procedure was done and the version of Shri Desai and Panch no.1 is found inconsistent to the say of the complainant. The probability posed by the learned senior counsel appearing for the appellant before the Court that when the appellant was serving

as Talati-cum-Mantri since years i.e. for the last more than 2 to 3 years, and in response to the notice served on 13th February, 1986, the entire sum payable under one head being recovered, attempt of making some help on request to mutate the names in the revenue record, should not be viewed with any doubt. Many Government employees are extending their helping hands to a person who is paying Government dues at least on the day on which the payment is being made; otherwise such conflict would not have been cropped up in the evidence whereby the complainant was asked to obtain the signatures without any assurance from the appellant's side, and that too, in a document in the nature of pedhinama. On one hand, no formal pedhinama was prepared, if muddamal papers are seen; and on the other hand, as per the panch no.1, the complainant was asked to come to his residence at Dholka on 24th February, 1986 and he was also assured by the appellant that his 'Varsai' work will be done. It is likely that the complainant may have missed some part of the event that had occurred or there is also

scope that the panch no.1 may have given some exaggerated version as per the improvements made by the Investigating Agency at the time of drawing of the panchnama. But when in an ACB trap case there is hazy evidence as to the initial demand made before presuming acceptance of hidden demand of illegal gratification, the Court should get assured doubly that the appellant had directly or indirectly demanded the amount of bribe/ illegal gratification only. The appellant being revenue recovery officer on behalf of the State, he does not fall in the category of persons who are not supposed to touch the currency notes in discharge of their duties. So when an accused attempts to put a defence even indirectly of justification of the amount accepted, then the Court is supposed to think of all probabilities from different angles including the view point placed by the prosecution. When the conduct of the appellant was so sterned and strict against the family of the complainant and when there was dispute in the family of the complainant as to who shall pay the amount of land

revenue, and when the complainant had attempted to get the names mutated in the record of rights for about one year or more after the death of his father and the insistence of the complainant that names of mother and sisters of the complainant should not see the light of the record of rights and the family had received a written notice on 13th February, 1986, i.e. a day prior to the date of trap and the amount payable which could have come in the way of initiation of process of mutation of entry, is practically equal to the amount which was due to the Government under one head as per the documents produced by the appellant to probabalise his defence, the arguments advanced by Shri Barot, learned senior counsel appearing for the appellant, should not be ignored by giving some unjustifiable reason that the insistence of payment of amount and in turn demand made by the appellant was for illegal gratification only. The panch no.1 may not be telling total lie but his improved version and that too in the conflict of the version of the complainant,

makes the prosecution case doubtful even as to the demand of illegal gratification made on 4th February, 1986. The learned trial Judge ought not to have raised any presumption against the appellant in above stated set of facts and circumstances emerging from record. There is no satisfactory evidence beyond doubt, if the appellant has said whether the complainant had brought the relevant amount when he had requested to help the complainant in 'Varsai' proceedings, then he was justified in insisting for the amount of at least basic amount of land revenue, House Tax, etc. which are different amounts and the arrears of that amount has little concern when it comes to mutation of entry in the record of rights so far as agricultural lands are concerned.

20. The arguments advanced by Shri A.J. Desai, learned Additional Public Prosecutor, that if the appellant had accepted the muddamal currency notes innocently and against the payment of amount of land revenue, under one of the heads of payment made in the notice

dated 13th February, 1986, he ought to have prepared the receipt first and would have kept the amount along with other amounts collected on behalf of the Government and there was no business for him to prepare any papers of pedhinama. Keeping of money at a separate place is an important circumstance against the appellant and therefore, the learned trial Judge was right in raising presumption against the appellant that he had accepted the amount in response to the demand made earlier by him for helping the complainant in 'Varsai' proceedings. But the alternative argument advanced in the background of the nature of evidence available on record by Shri Barot has equal force that the appellant had successfully shown the probability that the acceptance of the amount was against the Government land revenue because the family of the appellant was served with the notice of demand only on previous day and three days prior to the trap i.e. on 10th February, 1986, the statement of cousin brother of the complainant was recorded and unless the basic land revenue is

paid by the family, no proceedings of mutation even could be initiated by him. The family had paid the Government dues in part on earlier occasion and each recovery officer is entitled to accept the part payment when it comes to Government dues of land revenue as per the policy of the Government. In that situation, the Court should see that the amount which was required to be paid by the complainant against the land revenue and if the difference between the two is more than reasonable, then some inference against the appellant could have been drawn. But if the notice charge is considered then the amount of Rs.148-83 ps. was the amount under one of the heads, which was demanded by the appellant from the complainant and his family. On earlier occasion, his cousin brother had paid the amount of Rs.200/- and many such relevant aspects have been admitted by the complainant. Material aspects have been suppressed by the Investigating Agency including the notice dated 13th February, 1986. The version of the ACB Inspector Shri Desai should be viewed with great caution

because he is the trapping officer and he is interested in success of the trap and its ultimate success; otherwise there was no reason for him to pose ignorance before the Court though he was very well aware about the arrears of land revenue from the family of the complainant and during the course of investigation, he had occasion to see the notice dated 13th February, 1986. It is true that as per the settled legal position, the panch witness is not a trapping witness but some material small improvements made by this witness, if compared with the say of the complainant, make this Court to believe that it would be risky or unsafe to link the appellant with the crime on the sole deposition of the panch no.1-PW-2-Rameshbhai. It is true that in an ACB trap case, if the evidence of any one reliable witness is acceptable and with ring of truth, the appellant can be held guilty; but in view of the discussion made hereinabove referring to the salient features of the evidence led by the aforesaid three main witnesses, this Court is unable to accept the say of learned

Additional Public Prosecutor Shri Desai that the recording of conviction is absolutely legal. On the other hand, the submissions of Shri M.R. Barot are found more logical and acceptable.

21. While considering the say of Shri A.J. Desai, learned Additional Public Prosecutor and Shri M.R. Barot, learned senior counsel appearing for the appellant, the Court has considered the observations and discussion made by the Bombay High Court in the case of ***Tryambak Lilaji Binnar v. State of Maharashtra, reported in 2002 Cr.L.J. 3059***. In this decision, of course the complainant had demanded receipt for the amount paid. Here in the present case, the complainant had not left the office because the papers prepared were kept lying on the table by him though one of such papers was given to him as admitted by him for obtaining the signatures and the person accompanying him was kept sitting and both of them had not left the office and it is difficult for the Court to

infer against the appellant in the present case or presume anything in favour of the prosecution that the complainant would not have demanded the receipt for the payment made or the appellant would not have started preparing the receipt before both of these visitors left his office. The ratio cited of the Bombai High Court, therefore, would help the appellant to some extent. In the case of Bombay High Court, the complainant wanted to repair his hut which was in dilapidated condition and, therefore, he approached the accused who was the Forest Officer with a request to get his permission for using the forest wood for preparing his hut. It is alleged that the accused demanded an amount of Rs.600/- as illegal gratification for the same. A trap was led and the appellant was caught. However, there were certain material aspects which have falsified the entire case of the prosecution. The appellant was not having any authority to grant any permission to the complainant to reconstruct his hut. In fact, even according to the complainant, when the permission was refused by the authority,

he did construct the hut. This aspect was showing that the complainant was eager to see that the Forest Officer does not take any action for using the Forest wood in reconstruction of his hut. It was in evidence that the complainant was highly interested in involving somebody from the Forest Department. It was also in evidence that the complainant had demanded receipt for Rs.600/- given by him to the appellant. Ultimately, the receipt was not even prepared before the accused was caught by the raiding party. The Bombay High Court gave benefit of doubt to the accused on the ground that the accused was entitled to receive the amount of fine. The amount paid by him was equal to the amount of fine which could have been imposed and the complainant had also demanded the receipt as admitted by him. In the present case, mere receipt was not demanded by the complainant, probably would not wash away defence of the appellant.

22. In the case of ***Salimkhan v. State of Assam, reported in AIR 1986 SC 307***, the Apex Court

has held that the High Court obviously lost the sight of the fact that the appellant may have lost his agility in the particular circumstance the notes could have been inserted without the appellant knowing it. In this decision, the acquittal which was reversed by the High Court has been restored by the Apex Court stating as under :

> *“6. The allegation that P.Ws. 3 and 8 were interested in P.W. 1 has not been carefully examined by the High Court yet the conclusion of the trial Court has been disturbed. P.W. 7 was admittedly present at the spot and he has categorically spoken that when the appellant's fingers were put into the mixture they did not turn rosy. The trial Court had referred to this fact and relied upon it. That evidence which had been accepted, probabilises the defence plea that the currency notes had not been received by the appellant in his left hand and, therefore, the insertion of the notes into the pocket of the appellant by*

some other person was more probable. This is the defence plea which had been accepted by the trial Court. We are inclined to think that reversal by the High Court was not warranted."

23. In the present case, the particular circumstance indicates that the appellant may not be knowing that the amount tendered to him is not against the demand made in the notice dated 13th February, 1986 and in turn, reiterated on the entry of the complainant with a person who was a stranger to the appellant, may not be aware that he is going to be a victim of the trap arranged on account of some ill-feeling and that too after one year of the death of the father of the complainant by initiating the talk referring to 'Varsai'.

24. This is not a case of demand of bribe or illegal gratification under coercion or fear of being harassed, otherwise the evidence of the complainant could have been accepted even without corroboration. In the present case,

the motive of a particular kind is mentioned for demand of bribe and the same has been tarnished by the defence side by showing the probabilities and the inimical feeling that might be there in the mind of the appellant. In the present case, there is no evidence worth the nature from which it is possible to infer that the appellant had by illegal means or otherwise has abused his position as a public servant only with a view to obtain the illegal gratification. The element of criminal misconduct is missing which is the basic requirement to bring home the charge.

25. In the present case, the ***State of Andhra Pradesh v. T. Venkateshwara Rao, reported in AIR 2004 SC 1728***, the Apex Court has observed that the fact should lead to an irresistible conclusion that the amount was received by the appellant as bribe amount. Of course, the facts are a bit different but the ratio would positively help the appellant in the present case. For the sake of brevity and convenience, I would like to reproduce the

relevant paragraph nos.6 and 7 of the cited decision as under :

> *"6. Having heard learned counsel for the parties and having perused the records, we are unable to accept the argument addressed on behalf of learned counsel for the appellant. We think the High Court was justified in coming to the conclusion that the contract for which PW-1 had offered his bid was only under consideration and was not finally accepted therefore, the question of the respondent agreeing to give the work order on payment of bribe did not arise. The High Court was also justified in coming to the conclusion that on 24-4-1987 between 11 a.m. and 1 p.m. respondent was not in his office hence the prosecution case that PWs-1 and 2 approached him in his office on that day to pay the bribe cannot be accepted. The High Court was also justified in coming to the conclusion that no reasonable man*

would have agreed to accept the bribe in the presence of PW-2 who admittedly had a grievance against the respondent. These findings, in our opinion, are based on material on record and there is no perversity involved in the conclusions arrived at the High Court in regard to these findings. Though learned counsel for the appellant is justified in contending that PWs-4 and 5 are independent witnesses hence their evidence ought not to have been rejected by the High Court, in our opinion the fact that they are independent witnesses ipso facto does not establish the prosecution case that the respondent demanded or received a sum of Rs. 400 in the form of tainted currency notes on the said date. Their evidence only establishes the fact that when they entered the house, Rs. 400 was recovered from under the mattress in the best-room of the respondent and on testing the respondent's hand tested positive for

having handled the tainted money. The evidence even if it is accepted as true would not lead to an irresistible conclusion that this money was received by the respondent as bribe money because of the explanation given by the respondent wherein it is stated that the money in question was kept in advance by PWs-1 and 2 before his arrival in the house and he was asked to bring that money by PWs-4 and 5 when they came to his house which he did. Because of his handling the currency, he came in contact with the phenolphthalein powder. Bearing in mind the findings of the High Court in regard to the genesis of this bribery demand we think the explanation given by the respondent by way of defence and supported by evidence cannot be rejected as improbable or farfetched.

7. In this view of the matter, we find no merit in this appeal. The appeal fails and the same is hereby dismissed.

Appeal dismissed."

26. It is true that in the above decision, the Apex Court was dealing with the appeal against the order of acquittal recorded on proposition 'A' i.e. want of irresistible conclusion that the amount accepted was a bribe amount in view of the explanation given by the accused, then the appellant in the present case, can be given advantage.

27. In the case of ***Suraj Mal v. the State (Delhi Administration), reported in 1979 Cr.L.J. 1087***, the Apex Court has observed that mere recovery of money from the accused is not sufficient. In the case of bribery, mere recovery of money divorced from the circumstances under which it is paid is not sufficient to convict the accused when the substantive evidence in the case is not reliable, is the ratio of the cited decision. I do not think it necessary to reproduce the relevant paragraph no. 2 of the said decision on the strength of which the conclusion has been recorded by the Apex Court in the cited

decision.

28. In the case of ***Nanji Ranchhoddas Tavadiya v. State of Maharashtra, reported in 1994 Cr.L.R. (Maharashtra) 57***, the Bombay High Court has observed that the conviction is not sustainable. This finding has been arrived at by the Bombay High Court considering more than one aspects. The Court found that there is no evidence of trace of anthracene powder, is doubtful. But the Court has also considered that there is no convincing evidence as to the demand of Rs.1000/- as illegal gratification and the accused was not in position to allot the house to the complainant as he was not connected with the function of allotment. It is true that the facts of this case are materially different, but in the present case, the observations made by the Bombay High Court can be looked into because the law says that the appellant herein had no authority to confirm the mutation of names of two brothers or in favour of all the heirs of the complainant's

deceased father. It was not possible for him to undertake the mutation proceedings unless the amount of land revenue is paid/ cleared by the complainant and deletion of names of female members including the widow i.e. mother of the complainant, would have taken a long process including the order of the competent revenue authority i.e. Mamlatdar or senior most clerk i.e. Head Clerk, having authority to certify the entry. So there was no scope for the appellant herein to demand gratification illegally. That point could have been reached for the first time, the appellant being the key person to enter the names in the record of rights, only after clearance of the Government dues. That stage had not reached. It appears that all these aspects were missed by the trial Court before linking the appellant with the crime of accepting the illegal gratification and for indulging into criminal misconduct as public servant punishable under Section 161 of the Indian Penal Code.

29. In view of above observations and discussion,

and for the reasons and legal situation and totality of facts emerging from record, and the proceedings which are before the Court, the present appeal is hereby allowed. The appellant is given benefit of doubt. The judgment and order of conviction and sentence dated 22nd April, 1988 passed by the learned Special Judge, Ahmedabad (Rural) at Narol, in Special Case No.8 of 1986, is hereby set aside. Perhaps “chalk has been presented naming it cheese” by the ACB Inspector Shri Desai before the learned trial Judge. A thick shadow of doubt has taken me to this conclusion. The appellant, therefore, is ordered to be acquitted on this count from the charges levelled against him in respect of the offence in question. Order and finding accordingly. The bail bond, if any, stands discharged. The amount of fine paid, if any, shall be refunded to the appellant.

(C.K. Buch, J)

Aakar